

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

IN RE:

CARTER'S, INC.

CASE NO.: SL06-03196

Debtors/

NOTICE TO CREDITORS AND OTHER PARTIES IN INTEREST

**TRUSTEE'S CONSOLIDATED MOTION AUTHORIZING AND APPROVING
SALE OF DEBTOR'S GROCERY STORES, OR, IN THE ALTERNATIVE,
FOR ABANDONMENT OF ALL PROPERTY
EXCEPT THE INVENTORY AND LIQUOR INVENTORY**

The attached motion has been filed with the Bankruptcy Court. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney. (If you do not have an attorney, you may wish to consult one.)

If you want the court to consider your views on this matter, attend the hearing scheduled for August 14, 2006 at 9:30 a.m. at the **United States Bankruptcy Court, One Division Ave., Grand Rapids, Michigan, Courtroom A.**

You or your attorney may wish to file a response explaining your position. Such response should be **received** at least three business days prior to the scheduled hearing. A copy should also be served upon the party who has filed the motion and to his/her attorney. **Please refer to Administrative Order 2004-06 (Mandatory Electronic Filing), effective January 1, 2005, for practices and procedures for filing pleadings with the court.**

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.



Notice returned to Ronald A. Schuknecht, Esq., for service of notice, motion and order reducing notice period upon matrix. (August 8, 2006-jm)(Court to serve Buyers' List)

August 8, 2006

DANIEL M. LAVILLE
CLERK OF BANKRUPTCY COURT

/s/

BY: Jackie Malone, Deputy Clerk

NOTICE IS HEREBY GIVEN that the court may, in its discretion, orally continue or adjourn the above hearing on the record in open court. If this occurs, parties in interest will not be given further written notice of the continued or adjourned hearing. If an entity is not present at the originally scheduled hearing, information regarding the time, date and place of an orally continued or adjourned hearing may be obtained at the Clerk's office from the docket.

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

In Re:

CARTER’S, INC.,

Case No: SL 06-03196

Debtor.

Stephen M. Gross (P35410)
Attorney for Debtor

**Chapter 7
Hon. Jo Ann C. Stevenson
Bankruptcy Court Judge**

Ronald A. Schuknecht (P27986)
LEWIS, SCHUKNECHT & KEILITZ, P.C.
Attorney for Trustee
ron@lsklegal.com

**TRUSTEE’S CONSOLIDATED MOTION AUTHORIZING AND APPROVING SALE
OF DEBTOR’S GROCERY STORES OR, IN THE ALTERNATIVE, FOR
ABANDONMENT OF ALL PROPERTY
EXCEPT THE INVENTORY AND LIQUOR INVENTORY**

James W. Boyd, Trustee (hereinafter “Trustee”), by and through his attorney, Ronald A. Schuknecht for Lewis, Schuknecht & Keilitz, P.C., states as follows for his Consolidated Motion Authorizing And Approving Sale Of Debtor’s Grocery Stores Or, In The Alternative, For Abandonment Of All Property Except The Inventory And Liquor Inventory (hereinafter the “Motion”):

1. The Debtor, Carter’s, Inc., filed for relief under Chapter 7 of the United States Bankruptcy Code on July 12, 2006.
2. James W. Boyd is the duly qualified, appointed and acting Trustee in the above captioned bankruptcy case.
3. Prior to the bankruptcy filing, Debtor owned and operated 14 grocery stores throughout the State of Michigan, with stores located in Boyne City, Lake City, Gaylord, Kimbal, Edenville, Beaverton, Gladwin, Houghton Lake, Tawas, Au Gres, Oscoda, Charlotte, Durand,

and Onaway. Trustee is informed and believes that Debtor had leased the real property and buildings for all of the stores except the stores in Charlotte and Lake City where the Debtor owned the real property and buildings.

4. Each of the stores has varying amounts of inventory, including, but not limited to, perishable products and products with expiration dates (hereinafter the “Inventory”). In addition, each store has varying amounts of furniture, fixtures, equipment and other personal property used in the operation of the store (all collectively hereinafter the “Property”). Debtor owns the real property and building located in Charlotte and Lake City (hereinafter collectively the “Real Property”). Lastly, each store has a liquor license and perhaps permit(s) associated therewith (hereinafter the “License”) and varying amounts of alcoholic beverages (hereinafter all collectively the “Liquor Inventory”).

5. This Court entered an Order on July 20, 2006 authorizing Trustee to liquidate the Inventory. Trustee is now seeking authorization and approval to sell the Property, the Real Property, the License and the Liquor Inventory.

6. This Court authorized Trustee to employ Century Asset Management Inc. (hereinafter “Century”) to sell the Debtor’s assets by Order dated July 20, 2006. Century advertised the stores for sale as “turnkey” operations and conducted open houses and showings at all or nearly all of the stores. As a result of Century’s marketing efforts, Century and/or Trustee have received written offers on all 14 of the Debtor’s stores as “turnkey” operations. In many cases, Trustee or Century received more than one offer on the same store.

7. The highest and best offer Trustee received for each store is set forth on Exhibit 1 attached hereto and incorporated herein, showing the amount offered and the entity that made the offer. Trustee has prepared and is circulating a Purchase Agreement, a blank copy of which is

attached hereto and incorporated herein as Exhibit 2. Trustee believes that the terms of each sale will be the same or substantially similar to those contained in Exhibit 2 and that a formal Purchase Agreement will be executed by the parties at or before the hearing on this Motion. Trustee reserves the right, in his sole discretion, to withdraw this Motion at any time prior to the execution of a Purchase Agreement.

8. Trustee intends to solicit higher and better offers for the sale of the stores before and at the hearing on this Motion. Trustee may solicit, entertain and accept other bids in his sole discretion and make recommendations to the Court regarding those or any bids. **Take notice that the bidding will be on the same terms and conditions as set forth in the Purchase Agreement attached and any interested bidder will be required to present a certified check or other form of guaranteed funds in the amount of \$25,000.00 made payable to “James W. Boyd, Trustee” at the hearing on this Motion to qualify to make a bid.**

9. Consistent with the July 20, 2006 Order, Trustee intends to pay Century a 10% commission based the gross sales proceeds generated from the sales of the Inventory, Property, License and Liquor Inventory and a 6% commission on the sale of the Real Property. Trustee also intends to pay Century, on an interim basis without further Order of the Court and from the sale proceeds, all of the reasonable and necessary costs incurred by it to sell the Property, Real Property, License and Liquor Inventory. Century will keep detailed records of the expenses incurred related to the sales and shall provide such records for review by the Court and the Office of the U.S. Trustee with the submission of a Motion seeking a final Order regarding the costs.

10. Trustee is informed and believes that Nash Finch, Inc.(hereinafter “Nash”) is the first secured creditor regarding the Property, Real Property, License and Liquor Inventory at all of the

stores except Beaverton, Gladwin and Edenville (the first secured party on those three stores is Fruchey Foods, Inc., the party that has made the offer to purchase those stores) and even though the proceeds that may be generated from the sales will not likely pay them in full, Trustee and Nash are discussing the sales and Trustee is actively seeking Nash's consent to the sales.

Further, Trustee has requested a "carve-out" from the sale proceeds for the benefit of the creditors in this case in the amount of 10% of the gross sale proceeds, which amount will be in addition to Century's commissions and costs and any other costs of sale (for example, the utility bills to keep the stores lights working will be paid from the sale proceeds and not from the "carve out" paid to Trustee).

11. Trustee is informed and believes that J.A. Besteman Company (hereinafter "Besteman") has a claim that the Property, Real Property, License and Liquor Inventory are held in trust under the Perishable Agricultural Commodities Act (hereinafter "PACA") and that by virtue of the trust, Besteman's claim to the Property, Real Property, License and Liquor Inventory is superior to Nash's. Besteman and Trustee are discussing the sales and Trustee is actively seeking Besteman's consent to the sales. Further, Trustee has requested a "carve-out" from the sale proceeds for the benefit of the creditors in this case in the amount of 10% of the gross proceeds from the sales, which amount will be in addition to Century's commissions and costs and any other costs of sale (for example, the utility bills to keep the stores lights working will be paid from the sale proceeds and not from the "carve out" paid to Trustee). Other than Century's commission and costs, other costs of sale and the 10% carve out for the bankruptcy estate, by consenting to the sale as outlined herein, Besteman is not waiving any claims that it has regarding the PACA trust and rights it has to the proceeds from the sale of the Property, Real Property, License and Liquor Inventory.

12. Trustee is informed and believes that the Crossett Company (hereinafter “Crossett”) has a claim that the Property, Real Property, License and Liquor Inventory are held in trust under the Perishable Agricultural Commodities Act (hereinafter “PACA”) and that by virtue of the trust, Crossett’s claim to the Property, Real Property, License and Liquor Inventory is superior to Nash’s. Crossett and Trustee are discussing the sales and Trustee is actively seeking Crossett’s consent to the sales. Further, Trustee has requested a “carve-out” from the sale proceeds for the benefit of the creditors in this case in the amount of 10% of the gross proceeds from the sales, which amount will be in addition to Century’s commissions and costs and any other costs of sale (for example, the utility bills to keep the stores lights working will be paid from the sale proceeds and not from the “carve out” paid to Trustee). Other than Century’s commission and costs, other costs of sale and the 10% carve out for the bankruptcy estate, by consenting to the sale as outlined herein, Crossett is not waiving any claims that it has regarding the PACA trust and rights it has to the proceeds from the sale of the Property, Real Property, License and Liquor Inventory.

13. Trustee intends to abandon the Property, Real Property and License (Trustee intends to retain the Liquor Inventory and sell it as part of the sales of the Inventory already authorized by the Court) to Nash, Besteman and/or Crossett to the extent that consent to the sale is not given, a carve-out is not given or the sale contemplated herein is not otherwise approved. To the extent that that any store real property is subject to a lease wherein the Debtor is the tenant (and many of them are subject to leases), Trustee seeks an Order rejecting the lease in the event that the sale is not approved for whatever reason.

14. All of the stores have some type of License and Liquor Inventory. Consistent with the Purchase Agreement attached, the closing on the sale of the License and the Liquor Inventory

will take place after the approval of the transfer of the License. Trustee is requesting that the Court authorize the sale of the License and the Liquor Inventory as part of the approval of the sale hereunder so that a further motion will not be necessary once the License transfer has been approved.

15. Trustee intends to sell the Property, Real Property, License and Liquor Inventory “as is, where is”. Trustee makes no representations of any kind, express or implied. Purchasers will, at the sale, purchase and accept the Property, Real Property, License and Liquor Inventory on an “as is, where is” basis in all respects, without warranty or representation of any kind or nature by Trustee, whether oral or written, express or implied, or as to merchantability, fitness for a particular purpose, title, or otherwise, all of which Trustee disclaims.

16. Trustee intends to sell the Property, Real Property, License and Liquor Inventory under 11 USC § 363, including, but not limited to, 11 USC § 363(f) and 11 USC § 363(m), which provides for a sale free and clear of liens, interests or encumbrances, with any and all liens, interests and encumbrances on the inventory transferring and attaching to the proceeds in the same rank, order and priority as on the Property, Real Property, License and Liquor Inventory.

17. Objections by any creditor or any other party in interest must be filed in writing with the United States Bankruptcy Court for the Western District of Michigan, One Division Ave. NW, Room 200, Grand Rapids, MI 49503, with copies of the same being served upon James W. Boyd, Trustee, 412 S. Union, Traverse City, MI 49684 and Ronald A. Schuknecht, Esq., Lewis Schuknecht & Keilitz, P.C., PO Box 784, Traverse City, MI 49685-0784.

18. Any person with an interest in the Property, Real Property, License and Liquor Inventory should contact the Dennis Kubesh from Century Asset Management, Inc. at (231) 228-6667.

19. Trustee is proposing that any Order issued by the Court authorizing the sale of the Property, Real Property, License and Liquor Inventory have immediate effect and that the automatic ten day stay provided for by Fed. R. Bankr. P. 6004(g) is waived because the sale of the Property, Real property, License and Liquor Inventory must be completed as quickly as possible so that the stores can be opened as soon as possible.

20. Trustee proposes to hold the funds remaining after the payments to Century, all other costs of sale and the “carve-out” to the bankruptcy estate until further order of the Court and distribute those funds in accordance with the priority distribution scheme as determined by the Bankruptcy Code, applicable federal and state laws, including the Perishable Agricultural Commodities Act, and the Memorandum and Opinion and Order entered by the United States District Court for the Western District of Michigan in *J.A. Besteman, Inc. v Carter’s, Inc.*, Case No. 1:06-cv-425 (the “PACA Litigation”). Except as may be otherwise set forth herein, nothing herein or in the Purchase Agreement executed by the eventual buyer shall in any way prejudice the rights of any valid PACA claimants to exercise their rights as beneficiaries of the PACA trust established in the PACA Litigation, including the right of the valid PACA claimants to recover directly from the proceeds from the sales.

21. Trustee believes that the sales as outlined in this Motion are in the best interest of the creditors and the bankruptcy estate because the sales are anticipated to generate funds that will be available for distribution to creditors of the Debtor.

WHEREFORE, Trustee prays that this Court enter an individual Order in favor of each Buyer set forth in Exhibit 1 that:

A. Grants Trustee's Motion;

B. Authorizes Trustee to sell and approves the sale of the Property, Real Property, License and Liquor Inventory under the terms and conditions set forth in this Motion and to the highest bidder;

C. Authorizes Trustee to pay Century a 10% commission on the sale of the Property, License and Liquor Inventory and a 6% commission on the sale of the Real Property and its reasonable and necessary costs incurred in conducting the sales, subject to the filing of a Motion for a final Order regarding the costs;

D. Immediately abandons the Property, Real Property and License to Nash and/or Besteman and/or Crossett and rejects any real property lease that may be in effect to the extent that the sale is not authorized or approved;

E. Provides that it has immediate effect and waives the ten day stay as authorized by Fed. R. Bankr. P. 6004(g); and,

F. Grants such other and further relief as the Court deems is just in this matter.

/s/Ronald A. Schuknecht

Date: August 8, 2006

Ronald A. Schuknecht (P27986)
Attorney for Trustee
402 S. Union/PO Box 784
Traverse City, MI 49685-0784
231-947-2310

EXHIBIT 1
TRUSTEE'S CONSOLIDATED SALE MOTION
08/08/06

<u>STORE LOCATION</u>	<u>HIGH BIDDER</u>	<u>BID AMOUNT</u>	
Charlotte	G&R Felpausch Co.	\$ 132,359	FFE plus inventory
Charlotte	G&R Felpausch Co.	\$ 175,000	Real Estate -- subject to Phase I Environmental
Durand	Monroe Realty, Inc.	\$ 50,000	Bid amount plus waiver of post-petition administrative rent claim totalling \$26,930.95 (through August 31, 2006)
Kimball	G&R Felpausch Co.	\$ 154,467	FFE plus inventory
Tawas	Badger Auctioneers	\$ 108,000	FFE plus inventory
AuGres	Theron & Darlene Holland	\$ 55,000	FFE plus inventory w/waivers
Onaway	Tom's IGA	\$ 33,297	Inventory
Onaway	Tom's IGA	\$ 50,000	FFE
Lake City	Family Fare, LLC -- Subsidiary of Spartan Stores	\$ 1,100,000	5 store package (FFE and inventory) including Lake City Real Estate
Houghton Lake			
Gaylord			
Boyne City			
Oscoda			
Edenville	Fruchey Foods, Inc.	**	** Saleable non-liquor inventory at 25% of retail cost (07/17/2006 non-liquor inventory cost of \$459,446.10), plus beer, wine and liquor at cost (07/17/2006 liquor inventory cost of \$43,113.08), plus waiver of post-petition administrative claim for rent, plus payment of personal property taxes totalling \$21,346.00.
Gladwin			
Beaverton			

Exhibit 2
Trustee's Consolidated Sale Motion

PURCHASE AGREEMENT

James W. Boyd, the duly acting and appointed Chapter 7 Bankruptcy Trustee in the matter of Carter's, Inc. (hereinafter the "Debtor"), Case No. 06-03196, pending in the United States Bankruptcy Court for the Western District of Michigan (hereinafter the "Bankruptcy Court"), whose address is 412 South Union Street, Traverse City, MI 49684 (hereinafter the "Seller"), and _____, whose address is _____ (hereinafter the "Buyer"), enter into this Purchase Agreement for the sale and transfer of the Bankruptcy Estate's interest in the inventory, furniture, fixtures, equipment, liquor license and permits, and any and all other personal property used in the operation of the grocery store known as the _____ located at _____ (but the not the Debtor's name or any of the names used by Debtor for the store, all of which are expressly excluded from the sale) [hereinafter all collectively the "Property"].

In consideration of the mutual covenants contained herein, and other good and valuable consideration, receipt of which is hereby acknowledged, Seller agrees to sell the Property to Buyer and Buyer agrees to buy the Property from Seller, subject to the approval of the Bankruptcy Court, on the following terms and conditions:

1. **Purchase Price.** The Purchase Price for the Property shall be _____. The entire Purchase Price shall be payable in cash or cash equivalent. The entire Purchase Price shall be paid at the time of closing of the sale contemplated by this Purchase Agreement.

2. **Deposit.** Upon execution of this Purchase Agreement, Buyer shall tender the sum of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) as a deposit (hereinafter the "Deposit"). The Deposit shall become non-refundable on the twenty-first day after the execution of this Purchase Agreement unless the Buyer does not consummate this sale because Seller is not able to secure approval of this sale from the Bankruptcy Court.

3. **Conveyance.** Upon payment of the full Purchase Price by Buyer to Seller, Seller shall deliver to Buyer a Trustee's Bill of Sale to become effective at closing. The parties hereto agree to execute any and all documents necessary to complete the sale contemplated herein.

4. **Sale Free and Clear of Liens.** The Sale of the Property shall be free and clear of liens, claims, interests and encumbrances under 11 USC 363 of the United States Bankruptcy Code, with all liens, claims, interests and/or encumbrances attaching to the proceeds received from the sale in the same order, rank and priority as they might exist on the Property. Seller shall take the steps to obtain the necessary court order to effectuate this paragraph and Seller shall do so in a timely manner after execution of this Purchase Agreement by both parties.

5. **Taxes and Assessments.** Except as otherwise set forth herein, all taxes and assessments presently due on the Property shall be paid from the sale proceeds in accordance with the priorities established by the United States Bankruptcy Code, while any taxes and assessments which become due on the Property after the date of the closing shall be paid by the Buyer. Taxes paid in arrears shall be prorated as of the date of the closing. All personal property taxes that may be due and owing by Debtor on the Property shall be paid by Buyer who shall indemnify and hold Seller harmless from those taxes. Any taxes incurred prior to the date that Debtor filed its bankruptcy case but assessed after that date shall be paid by the Buyer. Any sales/transfer taxes that arise as a result of the sale contemplated herein shall be paid by Buyer.

6. **Liquor License, Permits and Alcoholic Beverages.** A portion of the Property consists of a liquor license, permits and alcoholic beverages (hereinafter all collectively the "Liquor"). Only the sale of the Liquor is contingent on approval by the Michigan Liquor Control Commission of the transfer of the liquor license and permits to the Buyer.

7. **Closing.** Upon execution of this Purchase Agreement by the parties, Seller shall endeavor to obtain a hearing to approve the sale contemplated herein from the Bankruptcy Court. Closing on the sale of all of the Property except the Liquor shall take place within 2 business days after the entry of any Order by the Bankruptcy Court approving the sale contemplated herein. The closing on the sale of the Liquor shall take place within 2 business days of the approval of the transfer of the license and permits by the Michigan Liquor Control Commission.

8. **Bidding Procedure.** Buyer acknowledges that it is Seller's responsibility to obtain the highest price for the Property, and that Seller may solicit, entertain and accept other bids for the Property in his sole discretion at or before the hearing in the Bankruptcy Court on Seller's motion seeking approval of the sale of the Property. Buyer further acknowledges that Seller may make recommendations to the Bankruptcy Court regarding such other bids. Any bidding on the Property shall be increments of \$5,000.00. Buyer shall have the right to bid for the Property. Any and all bidding for the Property shall end by the completion of the hearing on the motion for approval of the sale. If a higher bid is made, accepted, and approved by the Bankruptcy Court for the Property, then Section 1 of this Purchase Agreement shall be deemed amended to reflect the changed Purchase Price.

9. **Seller's Warranties.** Seller transfers the Property to Buyer and Buyer accepts the Property from Seller in an "as is, where is" condition, with all faults. Seller makes no warranties or representations of any kind, including but not limited to, no warranties of title, merchantability, and/or fitness for any particular purpose.

10. **Leased premises.** The parties acknowledge that the Debtor was the tenant of the real property used by Debtor to operate the grocery store involved in the sale hereunder and that the lease may be in default. It shall be the Buyer's sole responsibility and cost to negotiate either a new lease with the landlord or a cure of any defaults and an

assumption of the existing lease. To the extent that the Buyer is able to assume the existing lease, the Buyer shall pay any of the cure amounts required under 11 USC 365 and the Seller may request that any Order entered approving the sale contemplated hereunder include a provision whereby Seller assumes the lease and assigns it to Buyer. If the Buyer negotiates a new lease with the landlord, then the sale contemplated hereunder shall be contingent on the landlord waiving its 11 USC 503 administrative claim and the Seller may request that any Order entered approving the sale contemplated hereunder include a provision that rejects the lease. The same provisions herein shall apply to any and all leased equipment that may be on the premises.

11. **Possession.** Buyer shall be entitled to possession of the Property as of the date of closing, subject to any rights of any landlord of the real property on which the Property may be located. The risk of loss to the Property shall remain with Seller up to the closing. The risk of loss to the Property shall be with Buyer after the closing.

12. **Notices.** All notices required by this Purchase Agreement shall be sent by first class mail or delivered personally to the respective parties at the addresses set forth in the first paragraph of this Purchase Agreement. Any Notice required under this Purchase Agreement shall be deemed sent when it is deposited in the U.S. Mail.

13. **Successors and assigns.** This Purchase Agreement shall be binding upon the respective parties, their successors, heirs, assigns, executors, administrators and personal representatives.

14. **Time is of the essence.** Time is of the essence in the performance of this Purchase Agreement.

15. **Amendment.** This Purchase Agreement may not be amended except in writing, signed by both Seller and Buyer.

16. **Entire agreement.** This Purchase Agreement contains all representations by each party to the other and contains the entire understanding between the parties with respect to the contemplated transaction. All prior communications concerning the contemplated transaction are replaced by this Purchase Agreement.

17. **Chapter 5 Claims.** Seller is not selling and buyer is not buying any claims or causes of action Seller may have under Chapter 5 of the Bankruptcy Code, all of which are expressly excluded from the sale hereunder.

Seller

Carter's, Inc.

By: _____

James W. Boyd, Trustee

Subject to Court Approval

Dated: __/__/__

Buyer

By: _____

Dated: __/__/__